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<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION</p> <p>=====</p> <p>COURTNEY JAYNE, Individually and as Personal Representative of the ESTATE of M.Z.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs. Case No. 4:18-CV-4088-KES</p> <p>CITY OF SIOUX FALLS,</p> <p style="text-align: center;">Defendant.</p> <p>=====</p> <p>Videotaped Deposition of: KELBY MIERAS Date: February 21, 2019 Time: 11:00 a.m.</p> <p>=====</p> <p style="text-align: center;">APPEARANCES</p> <p>Mr. Anthony J. Schrank Robins Kaplan, LLP Minneapolis, Minnesota</p> <p style="text-align: center;">Attorney for the Plaintiff</p>	<p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 Examination: Page</p> <p>3 By Mr. Schrank 5</p> <p>4 Exhibit Nos.: Page</p> <p>5 <u>Exhibit 21</u> - Memorandum, March 26, 2013</p> <p>6 CITY 00409 40</p> <p>7 -oOo-</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>APPEARANCES: (Continued)</p> <p>Mr. James E. Moore Woods, Fuller Shultz &amp; Smith, P.C. Sioux Falls, South Dakota</p> <p>and</p> <p>Ms. Karen A. Leonard Sioux Falls City Attorney's Office Sioux Falls, South Dakota</p> <p style="text-align: center;">Attorneys for the Defendant</p> <p>REPORTED BY: Audrey M. Barbush, RPR</p> <p>VIDEOGRAPHER: Jason Davis, Starhaven Films</p>	<p style="text-align: center;">S T I P U L A T I O N</p> <p>1</p> <p>2 It is hereby stipulated and agreed by and between the</p> <p>3 above-named parties through their attorneys of record, whose</p> <p>4 appearances have been hereinabove noted, that the videotaped</p> <p>5 deposition of KELBY MIERAS may be taken at this time and</p> <p>6 place, that is, at the offices of Woods, Fuller, Shultz &amp;</p> <p>7 Smith, P.C., 300 South Phillips Avenue, Suite 300,</p> <p>8 Sioux Falls, South Dakota, on the 21st day of February,</p> <p>9 2019, commencing at the hour of 11:00 a.m.; said deposition</p> <p>10 taken before Audrey M. Barbush, a Registered Professional</p> <p>11 Reporter and Notary Public within and for the State of South</p> <p>12 Dakota. Objections, except as to the form of the question,</p> <p>13 are reserved until the time of trial. Insofar as counsel</p> <p>14 are concerned, the reading and signing of the transcript by</p> <p>15 the witness is not waived.</p> <p>16 -oOo-</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 A They can be circumvented.</p> <p>2 Q One of the results of the 2013 incident review was</p> <p>3 signage modification and placing more signs, true?</p> <p>4 A True.</p> <p>5 Q Who designed the signs that are placed at Falls Park,</p> <p>6 from March 2013 until March 2018?</p> <p>7 A I'm not sure who exactly designed it.</p> <p>8 Q Do you know what those signs warn the public of?</p> <p>9 A That there's no swimming, turbulent waters, slippery</p> <p>10 rocks, and supervise children.</p> <p>11 Q It doesn't warn the public that the foam can get so big</p> <p>12 that it can hide the river's edge?</p> <p>13 A No.</p> <p>14 Q Does it tell the public to stay off the rocks or to</p> <p>15 stay on the path?</p> <p>16 A No.</p> <p>17 Q Why doesn't it tell people that the foam can hide the</p> <p>18 river's edge that leads to a river?</p> <p>19 A I don't know.</p> <p>20 Q Do you think that it should say that?</p> <p>21 A No.</p> <p>22 Q Why not?</p> <p>23 A I don't believe it's a reasonable response to all the</p> <p>24 circumstances.</p> <p>25 Q But slippery rocks is something that's a reasonable</p>	<p>1 the public of it, true?</p> <p>2 MR. MOORE: Object to form.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. SCHRANK:</p> <p>5 Q So if the City knows a known hazard or a known danger</p> <p>6 exists, they don't have to tell the public about it?</p> <p>7 MR. MOORE: Object to form.</p> <p>8 BY MR. SCHRANK:</p> <p>9 Q They don't have to warn the public of it?</p> <p>10 A I don't know.</p> <p>11 Q Should they warn the public of it?</p> <p>12 MR. MOORE: Same objection.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 BY MR. SCHRANK:</p> <p>15 Q Would you want to be walking around an area with piles</p> <p>16 of foam and unseen ledges all around you?</p> <p>17 MR. MOORE: Object to form.</p> <p>18 THE WITNESS: Would I want to? No.</p> <p>19 BY MR. SCHRANK:</p> <p>20 Q You would want to know that around this foam there are</p> <p>21 unseen ledges that you could fall off to in a river</p> <p>22 bed, true?</p> <p>23 A It's not an area I would enter.</p> <p>24 Q Do you think that children are attracted to large piles</p> <p>25 of foam?</p>
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<p>1 response to all the circumstances?</p> <p>2 A Yes.</p> <p>3 Q How are those -- okay.</p> <p>4 So it warns people of slippery rocks because</p> <p>5 slippery rocks are a danger, true?</p> <p>6 A True.</p> <p>7 Q Is foam buildup that hides a river edge and part of</p> <p>8 that concealment is that you fall down into a river</p> <p>9 bed -- is that not a danger?</p> <p>10 A It is.</p> <p>11 Q So then why don't the signs warn the people, the</p> <p>12 citizens, the guests, the visitors, of that danger?</p> <p>13 A Foam is not always present.</p> <p>14 Q Does it say that on the signs?</p> <p>15 A No.</p> <p>16 Q Does it say anywhere in Falls Park that it's</p> <p>17 temporary -- at certain times foam builds up and hides</p> <p>18 the river's edge which is a danger?</p> <p>19 A No.</p> <p>20 Q Do you think that should be posted somewhere?</p> <p>21 MR. MOORE: Object to foundation.</p> <p>22 THE WITNESS: I don't know.</p> <p>23 BY MR. SCHRANK:</p> <p>24 Q It would be a disregard for public safety to allow a</p> <p>25 known hazard or a known danger to exist and not warn</p>	<p>1 A Not necessarily.</p> <p>2 Q Do you think that children are attracted to snowbanks?</p> <p>3 A Not necessarily.</p> <p>4 Q Can children be attracted to foam piles?</p> <p>5 A I don't know.</p> <p>6 Q Have you ever seen kids playing in the foam at</p> <p>7 Falls Park?</p> <p>8 A No.</p> <p>9 Q Have you ever heard of kids playing in the foam at</p> <p>10 Falls Park?</p> <p>11 A Yes.</p> <p>12 Q When?</p> <p>13 A In March of 2018.</p> <p>14 Q Any other times?</p> <p>15 A No.</p> <p>16 Q Was anything done to evaluate the effectiveness of the</p> <p>17 signage that was modified and added after the 2013</p> <p>18 incident?</p> <p>19 A Not that I'm aware of.</p> <p>20 Q Do you remember in 2016 going to Falls Park, sitting at</p> <p>21 a picnic bench with Judy Payne and Mary Beth O'Connell?</p> <p>22 A I do.</p> <p>23 Q Do you remember the date of that?</p> <p>24 A I don't.</p> <p>25 Q What was the purpose of that meeting?</p>